Judgment Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 1286 of 2001
(Old No. 839 of 1990)

Balbir Singh
S/o Sri Ranvir Singh
R/o Village Pali Dangar
Patti Dangar
P.S. Paukhal
District Tehri Garhwal .....Appellant

Vs.

State .....Respondent

Shri Rajendra Kotiyal, learend counsel for the appellant.
Shri Amit Bhatt, learend A.G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per: Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 21.03.1990, passed by learned Sessions Judge, Tehri Garhwal in Sessions Trial No. 06 of 1989, whereby appellant Balbir Singh has been convicted under Section 302 read with Section 34 Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced him to imprisonment for life.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story in brief is that 24.04.1988, at about 12:30 p.m., P.W. 7 Daleb Singh was at his shop in village Kandikhal, Patwari Circle Paukhal, District Tehri Garhwal. Puran Singh Bhandari (deceased), P.W. 5 Chandra Dev Rana, P.W. 8 Surendra Kumar Agarwal, P.W. 9 Vir Singh and some other were also sitting there. Accused/appellant Balbir Singh and co-accused Narendra Singh, who had enmity with Puran Singh Bhandari (deceased) started beating him. Narendra Singh caught hold of the collar of Puran Singh and dragged him on the road towards Tehri while accused/appellant Balbir Singh pushed him from the back. After taking the deceased to some distance they made him fall on the ground. Finally Balbir Singh gave kicks with his boots on the person of the deceased while Narendra Singh gave blows with stone on the face and head of the deceased. The two accused left Puran Singh Bhandari in an injured and unconscious condition at the spot. The incident was witnessed by P.W. 2 Khushi Ram, P.W. 3 Bharat Singh, P.W. 5 chandra Dev Rana, P.W. 7 Daleb Singh, P.W. 8 surendra Kumar Agarwal and P.W. 9 Vir Singh. On receiving information, P.W. 1 Dharam Singh (son of the deceased) reached at the spot at 6:00 p.m. Injured Puran Singh Bhandari succumbed to his injuries at 7:15 p.m. Dharam Singh (P.W. 1) then got scribed First Information

Report (Ext. A-1) through Chandra Dev Rana (P.W. 5) and lodged the same with Patwari Paukhal on the same day (i.e. 24.04.1988) at about 9:00 p.m. (In Uttarakhand hills in the interior areas, the revenue officials are given police powers). P.W. 11 Vijay Singh Sajwan, the Patwari Prepared check report (Ext. A-6) on the basis of the report (Ext. A-1) and made necessary entries in the general diary, an extract of which is Ext. A-7. Vijay Singh Sajwan (P.W. 11) started investigation. On 25.04.1988, he took the dead body of Puran Singh Bhandari in his possession and prepared inquest report (Ext. A-8) and sketch of the dead body (Ext. A-9). He also inspected the spot and prepared the site plan (Ext. A-10). The dead body was sent in a sealed cover for post mortem examination. P.W. 4 Dr. R.K. Pant, conducted autopsy on the dead body on 26.04.1988, at 12:30 p.m. and prepared post mortem examination report (Ext. A-2). The Medical Officer opined that Puran Singh Bhandari died of coma as a result of ante mortem injuries. Meanwhile, P.W. 11 Vijay Singh Sajwan, Patwari took the blood stained shoes (Ext. 1 and 2) and blood stained soil and sample soil (Ext. 4 and 5) in his possession and prepared the memorandum. On 26.04.1988, the said Investigating Officer arrested the accused Balbir Singh. Another accused Narendra Singh, (who died during trial) was arrested on 29.04.1988. However, on 30.04.1988, the investigation was transferred to regular police

and P.W. 10 Sub-Inspector S.P. Singh took over the investigation. He interrogated the witnesses namely, Dharam Singh Surendra Kumar Agarwal, Vir Singh, Bharat Singh, Khusi Ram, Daleb Singh, Atar Singh and others. He also inspected the site and prepared site plan (Ext. A-3). The blood stained articles were sent by this Investigating Officer to the Chemical Examiner. The motive behind the commission of crime is said to be that on 21.01.1987, at about 9:30 a.m., P.W. 6 Atar Singh was sitting in his shop in his village Dholgi, Patti Barjula, District Tehri Garhwal. Puran Singh (deceased) and some other persons were also there. Accused/appellants Balbir Singh and Narendra Singh, assaulted Atar Singh (P.W.6). In criminal proceedings arising out of said incident on 29.01.1987, Puran Singh Bhandari adduced evidence against the accused. Since then they used to harbour enmity with Puran Singh Bhandari. That is why, it is said, they killed Puran Singh Bhandari on 24.04.1988. On completion of the investigation P.W. 10 Sub-Inspector S.P. Singh submitted charge sheet (Ext. A-5) against accused Balbir Singh and another co-accused Narendra Singh, for their trial in respect of the offence allegedly committed by them punishable under Section 302/34 I.P.C.

4. The Magistrate on receipt of the charge sheet, after giving necessary copies to the accused as

required under Section 207 Cr.P.C., appears to have committed the case to the Court of Sessions for their trial. Learned Sessions Judge, after hearing the prosecution and the defence framed charge of offence punishable under Section 302 read with Section 34 I.P.C. against both the accused Balbir Singh and Narendra Singh. Both pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Dharam Singh (informant and son of the deceased), P.W. 2 Khushi Ram (eye-witness), P.W. 3 Bharat Singh (eye-witness), P.W. 4 Dr. R.K. Pant (who conducted autopsy on the dead body of the deceased), P.W. 5 Chandra Dev Rana (scribe, eye-witness, and witness of the inquest report), P.W. 6 Atar Singh (in whose favor deceased gave evidence relating to the incident dated 21.01.1987), P.W. 7 Daleb Singh (eye-witness), P.W. 8 Surendra Kumar Agarwal (eye-witness), P.W. 9 Vir Singh (eye-witness), P.W. 10 Sub-Inspector S.P. Singh (Investigating Officer, who concluded the investigation) and P.W. 11 Vijay Singh Sajwan, (Patwari, who started investigation). During trial Narendra Singh died. The oral and documentary evidence was put to the accused Balbir Singh under Section 313 Cr.P.C. by the trial court in reply to which the alleged the same to be false. In reply to the queries made under Section 313 Cr.P.C., the accused Balbir Singh further alleged that he has been implicated due to enmity. It is also stated by this

accused that it was Puran Singh Bhandari, who gave lathi blows, which hit on his hand. After hearing the parties, the trial court found accused Balbir Singh guilty of charge of offence punishable under Section 302 read with Section 34 I.P.C. Thereafter, the parties were heard on sentence and convict Balbir Singh was sentenced to imprisonment for life. Aggrieved by said judgment and order dated 21.03.1990. this appeal was preferred by the convict before Allahabad High Court from where it has been received by transfer under Section 35 of U.P. Reorganisation act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the dead body of the deceased by P.W. 4 R.K. Pant, who prepared post mortem examination report (Ext. A-2). Said report discloses following ante mortem injuries:-

1. Lacerated wound 4cm x 2cm on left eyebrow, bone deep with depressed fracture on frontal bone at the site of injury.

2. Lacerated wound 3cm x 2cm, on right eyebrow, bone deep.

3. Fracture of nasal bone.

4. Contusion 4cm x 3cm, on left side of forehead, red in color.

5. Contusion 3cm x 2cm, on posterior aspect of right elbow, red in colour.

6. contusion 2cm x 2cm , on lateral aspect of right elbow, red in colour.

7. Contusion 4cm x lcm, on lateral aspect of right forearm, red in colour.

8. Contusion 3cm x lcm, on right side of back, red in colour.

9. Contusion 2cm x lcm, in sacrel area, red in colour.

10. Lacerated wound 2cm x lcm, on occipital, muscle deep.

11. Contusion 4cm x 3cm, just below right knee, red in colour.

12. contusion lcm x 0.5cm, on left knee, red in cololur.

13. Constusion lcm x lcm, above left ear.

14. Abrasion lcm x 0.2cm, on left side of face.

The Medical Officer after post mortem examination found that the cause of death of the deceased was coma, as a result of ante mortem injuries.

6. P.W. 1 Dharam Singh, son of the deceased, has stated that on 24.04.1988, some people from distance gave a call to tell him that his father has been killed

by accused Balbir Singh and Narendra Singh. On this, the witness states that he went and reached at the spot in Kandikhal at 6:00 p.m. P.W. 1 Dharam Singh further states that at that time his father was alive and he succumbed to the injuries at 7:15 p.m. The witness further states that then he lodged first Information Report (Ext. A-1) with Patwari Paukhal. P.W. 1 Dharam Singh has further stated that his father stood witness against accused in a case filed by Atar Singh, as such, the accused harbored enmity towards the deceased. In short, this witness has adduced evidence on the point of motive and relating to the fact that he lodged the First Information Report. Another witness, who has corroborated the motive assigned for commission of crime, is P.W. 6 Atar Singh, who has stated that on 21.01.1987 , at about 8:00 a.m., accused Balbir Singh and Narendra Singh assaulted him and in the case arising out of said incident, Puran Singh adduced evidence against the accused. As to the lodging of the First Information Report on the very day i.e. 24.04.2988, after Puran Singh Bhandari died, statement of P.W. 1 Dharam Singh gets corroboration from the statement of P.W. 11 Vijay Singh Sajwan, Patwari, who prepared check report (Ext. A-6) of the First Information Report and made necessary entry in the general diary, a copy of extract of which is Ext. A-7.

7. There are as many as six eye-witnesses of the incident, which took place on 24.04.1988 at about 12:30 hours in Kandikhal. Six eye-witnesses are- P.W. 2 Khushi Ram, P.W.3 Bharat Singh, P.W. 5 Chandra Dev Rana, P.W. 7 Daleb Singh, P.W. 8 Surendra Kumar Agarwal and P.W. 9 Vir Singh, P.W. 2 Khushi Ram has stated that on 24.04.1988 at 12:30 hours, he was washing his hands infront of his house when he saw accused Balbir Singh and Narendra Singh beating Puran Singh Bhandari (deceased) with kicks and fists. This witness further states that they made the deceased fall and caused injuries on his person. P.W. 3 Bharat Singh has corroborated the statement of P.W. 2 Khusi Ram. This witness has stated that on the day of the incident, he was having tea in the shop of Satta Singh and from there he saw accused Balbir Singh and Narendra Singh hurled abuses at Purna Singh Bhandari. They dragged him by getting hold of his collar. The witness further states that they took him towards PEEPAL tree and gave kicks and fists on the person of the deceased. The witness further states that he asked the accused not o kill the old man (Puran Singh Bhandari) but the accused threatened him (the witness) of dire consequences. The site plan (Ext. A-3) shows that the shop of Satta Singh is in the neighbourhood of shop of Daleb Singh near the road. The said map also shows the position of the PEEPAL tree and the place ‘Y’ and ‘Z’ where

the accused dragged Puran Singh Bhandari. P.W. 7 Daleb singh, who runs his own hotel (road side tea shop) in Kandikhal and in whose shop deceased Puran Singh Bhandari (deceased), Chandra Dev Rana, Vijay Singh Sajwan, and Surendra Kumar Agarwal, were sitting at the time of incident, has stated that accused Balbir Singh and Narendra Singh took Puran Singh Bhandari from his shop and dragged him towards Tehri on the road. P.W. 8 Surendra Kumar Agarwal has corroborated the story narrated by the above witnesses. This witness has further adduced evidence that on exhortation of Balbir Singh, Narendra Singh lifted Puran Singh Bhandari and threw him on the road. This witness has further stated that accused caused injuries on the person of the deceased by kicks and fists and later they dragged him on the road. On being asked by him to stop- to kill the old man, accused Balbir Singh said if he (Surendra Kumar Agarwal) wanted to save his life, he should retreat. This witness has further stated that not only Balbir Singh gave hard blows with boot on the person of Puran Singh but Narendra Singh also simultaneously gave blows with stone on the face of the deceased. P.W. 9 Vir Singh has further corroborated the story narrated by the above witnesses stating that on 24.04.1988, at about 12:30 hours, he was having tea in the shop of Daleb Singh when accused Balbir Singh, shouted-“ लाओ साले को उठाकर कौन है वो” And on this, Narendra Singh

caught hold of collar of Puran Singh Bhandari and both the accused started giving blows with kicks and fists on the person of the deceased. This witness also states he too asked Balbir Singh and Narendra Singh not to kill the old man. But the accused dragged him towards road. This witness has also stated that after taking him to some distance, Balbir Singh caused injuries with boots on the person of the deceased and Narendra Singh caused injuries with stone on the face of the deceased. Apart from this, P.W. 3 Bharat Singh, a chance witness, has also supported the prosecution story. Testimony of these witnesses is natural and trust worthy. In their lengthy cross examination, nothing has come out, which creates any reasonable doubt in the prosecution story narrated by them.

8. P.W. 5 Chandra Dev Rana is not only an eye-witness of the incident, who has supported the prosecution story but he is also the scribe of the First Informatiaon Report (Ext. A-1) and also the witness of the inquest report. (Ext. A-8), along with witnesses Vir Singh and others. P.w. 11 Vijay Singh Sajwan, Patwari, who started the investigation has proved the inquest report (Ext. A-8) and sketch of the dead body (Ext. A-9). The chemical Examiner's report also supports the prosecution story, as it shows that the blood stained soil taken from the

place of the incident and the clothes of the deceased contained human blood.

9. Having gone through the entire evidence on record, we are in agreement with the trial court that It is proved on the record that accused/appellant Balbir Singh along with his associate Narendra Singh caused injuries on the person of the deceased (Puran Singh Bhandari), which resulted in his death.

10. Shri Rajendra Kotiyal, learned counsel for the appellant argued that the names of eye-witnesses are not mentioned in the First Information Report (Ext. A-1) even though the same was got scribed by Chandra Dev Rana, who himself was an eye-witness. It is pertinent to mention here that Dharam Singh (P.W. 1), informant is not eye-witness and the facts known to him at the time of lodging of First Information Report were got scribed by him through Chandra Dev Rana, as such, we are of the view that this fact stands explained on the record that why the names of the witnesses could not be mentioned in report (Ext. A-1). The report Ext. A-1 is not the statement of Chandra Dev Rana.

11. It is also argued on behalf of the appellant that the Investigating Officer has failed to record the statement of the witnesses of fact under Section 161 Cr.P.C. for a period of seven days, as such, the

evidence adduced by them cannot be said to be natural and trust worthy. We are unable to accept the argument advanced on behalf of the appellant for the reason that it is established on the record that initially the crime was investigated by P.W. 11 Vijay Singh Sajwan, a revenue official but later the investigation remained in the process of transfer the same to the regular police and only then the statement of the witnesses could be recorded under Section 161 Cr.P.C. by P.W. 10 Sub-Inspector S.P. Singh (subsequent Investigation Officer).

12. Next submission made on behalf of the appellant before us is that there is no evidence of prior meeting of minds of Balbir Singh and Narendra Singh. In this connection, it is further contended that it was Narendra Singh, who caused injuries with stone on the face of the deceased, and the injuries caused by Balbir Singh can attract at the most offence punishable under Section 323 I.P.C. It is true that there is no evidence on record that before the occurrence of the incident, accused Balbir Singh and Narendra Singh planned to commit murder of Puran Singh Bhandari but it is settled principle of law that prior meeting of minds can develop at the spot itself. When both Balbir Singh and Narendra Singh were participating in the crime, one giving blows with boots and another causing injuries on the face with stone the common intention on their part

can be gathered. It is clear case where both had knowledge that the old man could die of the injures they were causing together. Therefore, we are of the view that it cannot be said that the two had no common intention in committing the culpable homicide.

13. Lastly, it is contended on behalf of the appellant that the First Information Report was not sent immediately to the Magistrate, as required under Section 157 Cr.P.C. and as such, the error on the part of Investigating Officer is argued to be fatal for prosecution case. However, for the mere reason that First Information report is not sent to the Magistrate immediately, as required under Section 157 Cr.P.C., in our opinion cannot be said to be fatal for prosecution in this case particularly when there is clinching eye-witness account of the incident, narrated by the witnesses. Also, we cannot ignore the fact that the geographical condition of the hilly district of Tehri Garhwal where otherwise also it is not possible to send the First Information Report to the Magistrate immediately as Patwari does not have the sufficient staff like the regular police has.

14. However, considering the fact that no deadly weapon was used by either of the two namely, Balbir Singh and Narendra Singh and the fact that Balbir Singh caused injuries with kicks only and that they

did not leave Puran Singh Bhandari dead who succumbed to the injuries at 7:15 in the evening, we are of the view that it is case of culpable homicide not amounting to murder covered by exception 1 to Section 300. From the suggestion given to the witnesses of fact and the reply given by the accused Balbir Singh under Section 313 Cr.P.C., it appears on the record that Puran Singh Bhandari (deceased) first gave lathi blows on the thumb of Balbir Singh due to which the accused got provoked. It has also come in cross examination of P.W. 5 Chandra Dev Rana, who is a doctor that at 2:45, he gave medical treatment to accused Balbir Singh on seeing injury on his left hand. This witness in the cross examination states that he doesn't know that the injury on the left hand of Balbir Singh was caused by Puran Singh Bhandari (deceased) by giving blow with a rod. As such, in our opinion the charge proved against the accused Balbir Singh is covered under Section 304 I.P.C. and not the one punishable under Section 302 I.P.C. In the facts and circumstances of the case after hearing the parties, we are of the view that sentence of rigorous imprisonment for a period of ten years would be just and appropriate sentence, which can be awarded against the accused/appellant for commission of culpable homicide not amounting to murder.

15. In view of the above discussion, the appeal deserves to be allowed partly. The same is partly allowed. The conviction recorded and sentence awarded to the accused/appellant Balbir Singh in respect of the offence punishable under Section 302 read with 34 I.P.C., is set aside and instead of the accused is found guilty of the offence punishable under Section 304 read with Section 34 I.P.C. He is convicted accordingly. Accused/appellant Balbir Sing is sentenced to rigorous imprisonment for a period of ten years under Section 304 read with Section 34 I.P.C. The appellant is on bail. His bail is cancelled. The trial court is directed to take the appellant into custody and make him to serve out the sentence, awarded by this court.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt. 16.04.07

Sweta